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6 Ministry of Economy, Trade and Industry of Japan

7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 WESTERN DIVISION
10

11 MARK STOYAS, NEW ENGLAND
12 TEAMSTERS & TRUCKING
13 INDUSTRY PENSION FUND, and
14 AUTOMOTIVE INDUSTRIES
15 PENSION TRUST FUND, individually
and on behalf of all others similarly
situated,

16 Plaintiffs,

17 v.
18

19 TOSHIBA CORPORATION, a
Japanese Corporation,

20 Defendant.
21

Case No.: 2:15-cv-04194-DDP-JC

**AMICUS BRIEF OF
MINISTRY OF ECONOMY,
TRADE AND INDUSTRY OF
JAPAN**

1 **I. INTEREST OF THE AMICUS**

2 The Ministry of Economy, Trade and Industry is a ministry of the
3 government of Japan. Its mission includes developing Japan's economy and
4 industry by focusing on promoting economic vitality in private companies and
5 smoothly advancing external economic relationships.

6 The defendant in this case is a Japanese company whose shares are listed
7 only in the Japanese market. The defendant has been subjected to claims in this
8 Court for monetary damages, including under Japanese law, for misstatements
9 made in Japan.

10 The Ministry of Economy, Trade and Industry of Japan is seriously
11 concerned regarding the political, legal and economic implications of this case on
12 Japanese issuers, industries and the Japanese economy. The Ministry of Economy,
13 Trade and Industry is also greatly concerned about the impact of the adjudication of
14 claims under Japanese securities laws in a United States class action under the
15 circumstances of this case.

16 **II. ARGUMENT**

17 The plaintiffs' claims against the defendant, which does not list or distribute
18 its shares in the United States, include claims under the Japanese Financial
19 Instruments and Exchange Act ("JFIEA"). For the following reasons, the Ministry
20 of Economy, Trade and Industry hopes that these claims based in Japanese law will
21 be adjudicated in the Japanese courts rather than the United States courts.

22 **A. The Adjudication of the JFIEA Claims in United States Class**
23 **Action May Damage Japanese Issuers and Japan's Industries**

24 The Ministry of Economy, Trade and Industry is concerned that subjecting
25 companies listed solely on Japanese stock exchanges to class action securities
26 litigation in the United States, where the companies neither list nor distribute their
27 securities, may damage the development of the Japanese capital market and
28 discourage investment in Japan. These concerns will deepen even further if United

1 States courts issue an adverse judgment against the defendant based on the JFIEA
2 in this case.

3 Specifically, the Ministry of Economy, Trade and Industry is concerned that
4 investors would be motivated to file suit and seek a judgment regarding their claims
5 under Japanese laws such as JFIEA in the United States, rather than Japan, as
6 collective-action procedures do not apply to claims brought in Japan under Article
7 21-2 of the JFIEA. Investors may see the United States litigation system, including
8 its class action system, extensive discovery procedures, and trial by a non-
9 professional jury, as highly favorable to plaintiffs. Eventually, there could be many
10 plaintiffs who file suit without a reasonable examination of the legitimacy of their
11 cases, some of which might even be abusive litigation.

12 Additionally, companies listed only in Japan could not have anticipated that
13 securities litigation based on the JFIEA would be brought and adjudicated against
14 them in both Japan and countries other than Japan at the time they became listed on
15 a stock exchange in Japan. Accordingly, they did not become listed in Japan with
16 this risk in mind. Parallel litigation in multiple countries may force those companies
17 to pay legal defense fees much higher than those normally incurred when litigation
18 is limited to only the Japanese courts and to devote massive administrative and
19 human resources to discovery compliance. These heavy costs and burdens are
20 totally unforeseeable for those Japanese companies, and against the background of
21 that threat, they may also be forced to accept high settlement demands.

22 Furthermore, if additional unsponsored ADRs that reference Japanese
23 companies not listed in the United States are created as a result of precedent
24 allowing JFIEA suits to be filed in the United States against them, such companies
25 will be further hampered by an increase in this foreign litigation risk over which
26 they have no control.

27 In addition, if cases such as this one are adjudicated in the United States, it is
28 possible that inconsistencies will arise between the decisions of the courts of the

1 United States and those of Japanese courts. This may eventually damage the legal
2 certainty regarding the JFIEA's application.

3 For all these reasons, businesses listed on the Japanese markets may become
4 more conservative in terms of their corporate fundraising and in other matters, and
5 such may also interfere with the development of Japanese industries and the
6 Japanese economy.

7 **B. Investors Can File a Suit Against the Defendant in Japan**

8 Additionally, it is important to note that the Japanese court system is fully
9 available for investors of any nationality to seek relief for claims such as these.
10 Numerous lawsuits for damages for misstatements in securities disclosures have
11 been brought under Article 21-2 of the JFIEA. In fact, there are already cases in the
12 Japanese courts regarding foreign investors' claims under this provision against the
13 defendant in this case. Furthermore, there are several judicial precedents in Japan in
14 which investors, including foreign investors, have sued and successfully recovered
15 damages from Japanese companies which made misstatements.

16 **III. CONCLUSION**

17 For the foregoing reasons, based upon concerns regarding the Japanese
18 companies, industries and economy, and the legal certainty of Japan's securities
19 laws, the Ministry of Economy, Trade and Industry of Japan wishes that the claims
20 under Japanese law in this class action securities litigation case will be adjudicated
21 in Japanese courts rather than United States courts, under principles of international
22 comity and *forum non conveniens*.

23 Dated: April 29, 2021

SADAT LAW GROUP

24 By: /s/ Arash Sadat

25 Arash Sadat

26 Attorneys for *Amicus Curiae*
27 Ministry of Economy, Trade and
28 Industry of Japan